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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,338	01/03/2006	Louis Lagler	P/4631-14	8840
2352 7590 05/27/2009 OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403				
EXAMINER KIRSCH, ANDREW THOMAS				
ART UNIT		PAPER NUMBER		
3781				
MAIL DATE		DELIVERY MODE		
05/27/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/563,338

Applicant(s)

LAGLER, LOUIS

Examiner

ANDREW T. KIRSCH

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 January 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SE/IB)
- Paper No(s)/Mail Date 12/22/2008 and 1/30/2009
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

1. The amendment filed January 30, 2009, has been entered.
2. The objections to the drawings and IDS have been removed in light of applicant's amendment.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action: (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
4. Claim 1-6, 7, 9, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 5,148,912 (Nozawa hereinafter) in view of US Patent No. 6,041,477 (Rentsch et al. hereinafter).

FIG.1

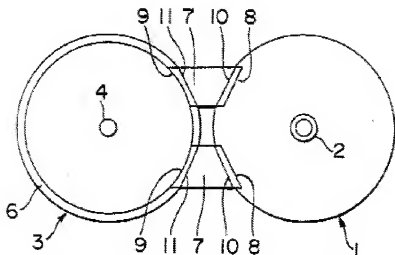


Fig. 1 of US Patent No. 5,148,912 (Nozawa hereinafter)

FIG.4

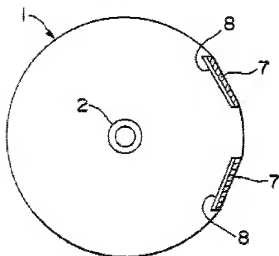


Fig. 4 of Nozawa

5. In re Claim 1, with reference to Fig. 1 and Fig. 4 above, Nozawa discloses: A closure moulded in closed position with

- a body (1) comprising fixing (col. 7, lines 5-7) means to fix the closure on a neck of a bottle, and

- a lid (3), comprising a sealing mean (4) to seal an orifice (2) of the bottle,
 - a snap hinge comprising a first and a second trapezoid element (7) and a first and second pair of film hinges (10, 11) each pair defining a first and a second plane (Fig. 4), the first and the second pair of film hinges (10, 11) connecting the first and the second trapezoid element (7) to the lid (3) and to the body (1), whereby the first and the second plane are arranged substantially parallel to an axis A (Fig. 4) of the closure.
6. Nozawa does not disclose that the body and the lid are separated by a circumferential gap.

FIG.5

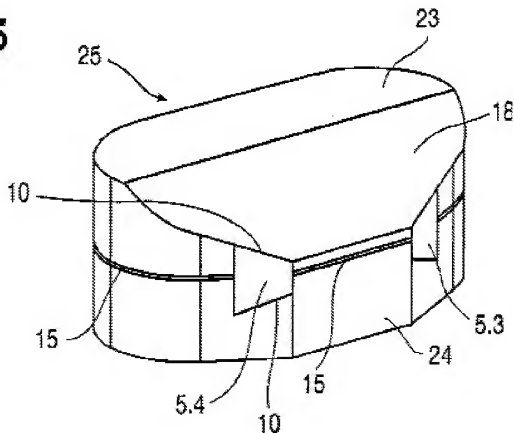


Fig. 5 of US Patent No. 6,041,477 (Rentsch et al. hereinafter)

7. However, with reference to Fig. 5 above, Rentsch et al. discloses a closure whereby the body (24) and the lid (23) are separated from each other by a circumferential gap (15).

8. Thus it would have been obvious to one having ordinary skill in the pertinent art at the time the invention was made to have modified the closure of Nozawa to have a circumferential gap as taught by Rentsch et al. in order to achieve the predictable result of separating the body from the lid.

9. In re Claim 2, Rentsch et al. discloses the first and second pair of film hinges are arranged at an angle Φ to each other, and the first and the second plane defined by the first and the second pair of film hinges are arranged at an angle ω , the angle Φ and an opening angle α of the closure is:

$$\phi / 2 = a \tan \left[\frac{\sin(\alpha)}{1 - \cos(\alpha)} \sin\left(\frac{\omega}{2}\right) \right] \quad (\text{column 13, lines 1-10})$$

10. In re claim 3, Rentsch et al. discloses that the opening angle a is in the range of 180° and 240° (col. 3, lines 39-42; col. 4, lines 51-53).

11. In re Claim 5, with reference to Fig. 1 and Fig. 4 above, Nozawa discloses that the film hinges (10, 11) are defined by a plane on the inside of the closure and the outside of the film hinges (10, 11) is defined by two flat boundary planes, arranged at an angle each other, and a cylindrical boundary surface having a radius. It is implicit that the boundary planes of the film hinges be at angle to each and have a cylindrical boundary surface otherwise the closure would not open.

12. In re Claim 6, with reference to Fig. 1 and Fig. 4 above, Nozawa discloses that the trapezoid elements (7) are spaced apart by a cutout.

FIG. 7

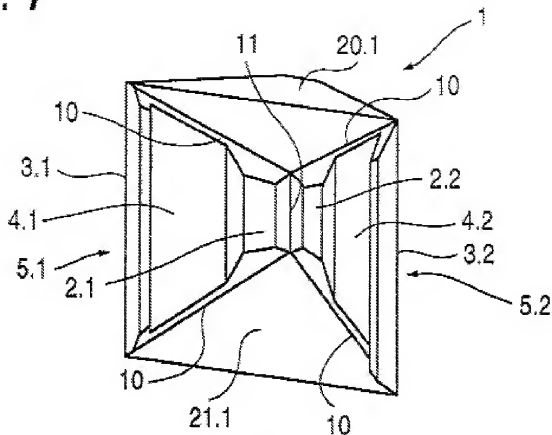


Fig. 7 of Rentsch et al.

13. In re Claim 7, with reference to Fig. 7 above, Rentsch et al. discloses that the trapezoid elements (5.1, 5.2) are connected by a thin film hinge along a shorter edge (11).

15. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nozawa in view of Rentsch et al. as applied to claim 1 above, and further in view of US Patent Application Publication No. 2002/0079282A1 (Harrold et al. hereinafter).

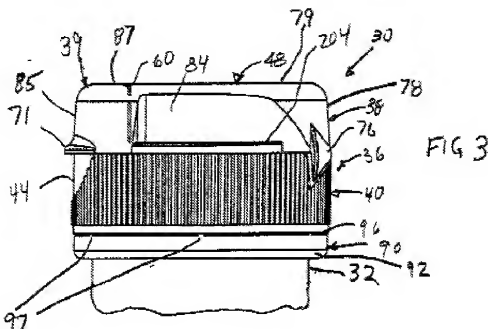


Fig. 3 of US Patent Application Publication No. 2002/0079282A1 (Harrold et al. hereinafter)

16. In re Claim 8, with reference to Fig. 1, Fig. 4, and Fig. 5 above, Nozawa in view of Rentsch et al. discloses the claimed invention except for tamper evidence means.

17. However, with reference to Fig. 3 above, Harrold et al. discloses tamper evidence means (90).

18. Thus, it would have been obvious to one having ordinary skill in the pertinent art at the time the invention was made to have modified the closure disclosed by Nozawa in view of Rentsch et al. to have tamper evidence means as taught by Harrold et al. in order to achieve the predictable result of indicating if the closure had been tampered with.

Response to Arguments

19. Applicant's arguments filed January 30, 2009 have been fully considered but they are not persuasive.

20. On page 4 of the remarks, Applicant argues that none of the references cited by the examiner disclose a closure that is "moulded in a closed position." Because the claim is an apparatus claim and not a method claim, the limitation stands as a "product by process" (the product being the closure, and the process being the molding position). Therefore, the only patentable weight offered to the limitation is that a prior art device must be capable of being produced by the claimed process. The applicant cites a specific example in which the cited reference may not be molded in the closed position. However, there exist alternative molding techniques which would allow the closure of Nozawa or Rentsch to be molded sequentially (two-stage mold) wherein the body of the closure is first molded and set in place, and becomes a part of the mold when the second stage material is flowed, allowing the plug 4 to be molded in the cavity 2 of Nozawa for example. As is also known in the art, a releasing agent could be used additionally in the two-stage molding process to allow the closure to open after it is molded.

21. On page 5 of the remarks, Applicant argues that both Nozawa and Rentsch both fail to disclose a closure including "a lid, comprising a sealing mean to seal an orifice of the bottle." However, the plug and opening in the closure of Nozawa and the equivalent structure of Rentsch are considered to seal the orifice of the bottle in that the orifice of

the bottle is viewed as being open and "un-sealed" until the plug closes the opening in the body of the closure. As an analogy, a closed door set in a door frame is considered to close and "seal" the opening a room.

Conclusion

22. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims

"define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW T. KIRSCH whose telephone number is (571)270-5723. The examiner can normally be reached on M-F, 8am-5pm, Off alt. Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

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/Andrew T. Kirsch/

Examiner, Art Unit 3781

/Anthony D Stashick/
Supervisory Patent Examiner, Art
Unit 3781